

UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

JOHN B. MARTIN,	:	
Petitioner	:	
vs.	:	
	:	CIVIL NO. 1:CV-15-0531
DISTRICT ATTORNEY CURCILLO, <i>et</i>	:	
<i>al.</i> ,	:	(Judge Caldwell)
	:	
Respondents	:	

M E M O R A N D U M

On January 14, 2015, Petitioner, John B. Martin, an inmate at the Huntingdon State Correctional Institution in Huntingdon, Pennsylvania, filed this *pro se* petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Following a guilty plea, Martin was convicted in the Court of Common Pleas of Dauphin County, Pennsylvania, in 2002 for criminal solicitation. He was sentenced to a term of two and one-half to five years' incarceration to be followed by nineteen years of probation. (Doc. 1, Pet.)

On April 27, 2015, this court undertook a preliminary review of the petition and concluded it was time-barred. We set forth our analysis in a memorandum. See *Martin v. Curcillo*, 2015 WL 1912721 (M.D. Pa.). We gave the parties an opportunity to address the timeliness issue. Martin did not file a brief or other response challenging the court's determination that his habeas petition is time-barred, and the time for doing so has now expired. In lieu of such a response, Martin filed a "Petition to Overturn or Dismiss Case," which promotes the substantive issues he raised in his petition and does not touch on the timeliness of his petition. (Doc. 12). Respondents also were given the opportunity

to address the timeliness issue raised by the court but failed to do so. For the reasons set forth in the April 27, 2015, memorandum, Martin's habeas corpus petition will be denied as untimely.

We must decide whether to grant a certificate of appealability. Under 28 U.S.C. § 2253(c)(2), a "certificate of appealability may issue only if the applicant has made a substantial showing of the denial of a constitutional right." For the reasons stated in the April 27, 2015, memorandum, Martin has not made such a showing. Therefore, a certificate of appealability will not issue. However, Martin is advised that he has the right for thirty (30) days to appeal our order denying his § 2254 motion, see 28 U.S.C. § 2253(c) and Fed. R. App. P. 4(a)(1)(A), and that our denial of a certificate of appealability does not prevent him from doing so, as long as he also seeks, and obtains a certificate of appealability, from the court of appeals. See Fed. R. App. P. 22.

An appropriate order follows.

/s/ William W. Caldwell
William W. Caldwell
United States District Judge

Date: August 3, 2015